

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT POLLUTION CONTROL BOARD

Versus

PARMAR DEVUSINH SHERSINH

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Appearance:

MR AD MITHANI for Petitioner  
None present for Respondent

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 05/05/2000

ORAL JUDGEMENT

1. Heard the learned counsel for the petitioner.  
Challenge is made in the Special Civil Application filed  
under Article-226 of the Constitution to the order dated  
24th May, 1998 of the Appellate Authority constituted  
under sect.28 of the Water (Prevention and Control of  
Pollution) Act, 1974, in Appeal No. 17 of 1986. The  
appeal is filed by the respondent no.1 and under the  
impugned order, same was held to be maintainable. The

objection raised by the petitioner regarding the maintainability of the appeal was came to be disallowed under this impugned order.

2. The learned counsel for the petitioner submits that the respondent has no locus standi to file the appeal before the Appellate-Authority. It is a grievance of the respondent no.1 before the Appellate-Authority that the consent order passed by the petitioner in respect of the respondent no.2-industry will adversely affect the petitioner and other persons of the area and he has right of appeal. It is true that respondent no.1 was not a party to the consent order, but in case that order adversely affects the petitioner, certainly, the appeal is maintainable. He was not a party to the order impugned before the appellate-authority and copy of the same was not required to be sent to him. But, merely because he was not a party or that the copy of the order was not sent to respondent no.1, is hardly any ground to disallow him from filing of the appeal. This is a matter of pollution control and all the affected persons can file an appeal under sect.28 of the Act, which is very specific and clear. Any person aggrieved by an order made by the Board under sect.25, sec.26 or sect.27, has a right of appeal. It is not the case of the petitioner that the order which has been challenged by respondent no.1 before the appellate authority does not fall under any of the provisions of sect.25, 26 or 27 of the Act. The water and air pollution are really a serious problems in the country and it is not unknown that the courts are taking these matters very seriously. Public interest litigations are being filed in the court in many of the matters where there is endanger of water or air pollution by installation of industry. If this is the position then, I fail to see in case the respondent no.1 has gone to the appellate authority by filing an appeal, how he could have been deprived of his right of pollution free air and water.

3. A person who was not a party to the order has a right of appeal to the appellate-authority though with the leave of the appellate-authority, where the impugned order adversely affects him. This position of law is well settled. The petitioner, in case, is aggrieved of the order of the Board, an appeal is permissible with the leave of the appellate-authority. Here the appellate authority has entertained the appeal and objection raised by the petitioner regarding its maintainability thereof has been turned down. In view of this legal position, the petitioner has no case whatsoever.

4. It is an interlocutory order and I fail to see any justification more so in the action of the Gujarat Pollution Control Board, Gandhinagar, to file this petition in this court. The Board is equally concerned to see that the citizens of the country get pollution free water and air. In such matters, if this petition is filed by the board, it necessarily gives an inference that possibly to favour the industry, this petition has been filed. Such an objection regarding maintainability of the appeal before the appellate authority at the instance of the petitioner is difficult to appreciate. The industry has not challenged this order. This petition otherwise is wholly misconceived and appears to have been an attempt on the part of some Officer of the Board to plead the case of the respondent-industry. The challenge to interlocutory order otherwise is also difficult to appreciate. The party to the litigation cannot be permitted to stall the final adjudication of the matter by filing the Special Civil Application in this court against an interlocutory order. This course cannot be permitted for the obvious reason that if ultimately the petitioner fails in the appeal, it has all right to challenge this order in the Special Civil Application to be filed against the final order of the appellate authority. In this case, the petitioner has all the right to challenge this interlocutory order in the Special Civil Application to be filed against the final decision given in the appeal by the appellate-authority. From the facts of this case, I find that the advice to file this Special Civil Application in the court given to the Board does not seem to be proper and more so where the control of air and watrr pollution is equally concern of the Board. Respondent no.2-industry concerned has not challenged this order though it is a party to the appeal. The petitioner cannot be said to be aggrieved of the order of the appellate authority which is challenged in this proceeding.

5. As a result of this aforesaid discussion, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted stands vacated. No order as to costs. The appellate authority is directed to decide the appeal within three months from the date of receipt of the writ of this order.

(S.K. KESHOTE, J.)  
(Kamlesh)